

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re ACCURAY INC. SECURITIES
LITIGATION

) Master File No. 4:09-cv-03362-CW

) CLASS ACTION

) This Document Relates To:

) ALL ACTIONS.

) REVISED ORDER PRELIMINARILY
) APPROVING SETTLEMENT AND
) PROVIDING FOR NOTICE

1 WHEREAS, a class action is pending before the Court entitled *In re Accuray Inc. Sec. Litig.*,
2 Master File No. 4:09-cv-03362-CW (the “Litigation”);

3 WHEREAS, the Court has received the Stipulation of Settlement, dated as of April 27, 2011
4 (the “Stipulation”), that has been entered into by the Lead Plaintiffs and Defendants, and the Court
5 has reviewed the Stipulation and its attached Exhibits;

6 WHEREAS, the Settling Parties having made application, pursuant to Federal Rule of Civil
7 Procedure 23(e), for an order preliminarily approving the settlement of this Litigation, in accordance
8 with the Stipulation which, together with the Exhibits annexed thereto, sets forth the terms and
9 conditions for a proposed Settlement of the Litigation and for dismissal of the Litigation with
10 prejudice upon the terms and conditions set forth therein; and the Court having read and considered
11 the Stipulation and the Exhibits annexed thereto; and

12 WHEREAS, all defined terms contained herein shall have the same meanings as set forth in
13 the Stipulation;

14 NOW, THEREFORE, IT IS HEREBY ORDERED:

15 1. The Court does hereby preliminarily approve the Stipulation and the Settlement set
16 forth therein, subject to further consideration at the Final Approval Hearing described below.

17 2. A hearing (the “Final Approval Hearing”) shall be held before this Court on
18 September 1, 2011, at 2:00 p.m., at the Oakland Courthouse, 1301 Clay Street, Oakland California,
19 to determine whether the proposed Settlement of the Litigation on the terms and conditions provided
20 for in the Stipulation is fair, reasonable, and adequate to the Settlement Class and should be
21 approved by the Court; whether a Judgment as provided in ¶1.14 of the Stipulation should be entered
22 herein; whether the proposed Plan of Allocation should be approved; and to determine the amount of
23 fees and expenses that should be awarded to Lead Counsel. The Court may reschedule the Final
24 Approval Hearing without further notice to Members of the Settlement Class. Lead Counsel shall
25 post notice of any change to the date or time of the Final Approval Hearing on the website,
26 www.gilardi.com.

1 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily
2 certifies, for purposes of effectuating this Settlement, a Settlement Class of all Persons who
3 purchased Accuray common stock during the period between February 7, 2007 and August 19, 2008,
4 inclusive, and who were allegedly damaged thereby. Excluded from the Settlement Class are
5 Defendants; any entity in which any Defendant has or had a controlling interest or that is a parent or
6 subsidiary or is controlled by any Defendant; Defendants' officers and directors, including any
7 person who was an officer or director during the Settlement Class Period; Defendants' affiliates,
8 legal representatives, heirs, predecessors, successors or assigns; and members of the Individual
9 Defendants' immediate families. Also excluded from the Settlement Class are those Persons who
10 timely and validly request exclusion from the Settlement Class pursuant to the Notice of Pendency
11 and Proposed Settlement of Class Action.

12 4. With respect to the Settlement Class, this Court preliminarily finds for purposes of
13 effectuating this Settlement that (a) the Members of the Settlement Class are so numerous that
14 joinder of all Settlement Class Members in the Litigation is impracticable; (b) there are questions of
15 law and fact common to the Settlement Class which predominate over any individual questions; (c)
16 the claims of the Lead Plaintiffs are typical of the claims of the Settlement Class; (d) the Lead
17 Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of all
18 of the Settlement Class Members; and (e) a class action is superior to other available methods for the
19 fair and efficient adjudication of the controversy, considering: (i) the interests of the Members of the
20 Settlement Class in individually controlling the prosecution of the separate actions; (ii) the extent
21 and nature of any litigation concerning the controversy already commenced by Members of the
22 Settlement Class; (iii) the desirability or undesirability of continuing the litigation of these claims in
23 this particular forum; and (iv) the difficulties likely to be encountered in the management of the class
24 action.

25 5. The Court approves, as to form and content, the Notice of Pendency and Proposed
26 Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the "Proof of

Claim”) and Summary Notice (“Summary Notice”) annexed as Exhibits A-1, A-2 and A-3 hereto, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice substantially in the manner and form set forth in ¶¶6-7 of this Order meet the requirements of Federal Rule of Civil Procedure 23, the Private Securities Litigation Reform Act of 1995 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

6. Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure, the Court appoints Gilardi & Co. LLC (“Claims Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Not later than June 14, 2011 (the “Notice Date”), Lead Counsel shall cause a copy of the Notice and the Proof of Claim, substantially in the forms annexed as Exhibits A-1 and A-2 hereto, to be mailed by first class mail to all Settlement Class Members who can be identified with reasonable effort;

(b) Not later than June 16, 2011, Lead Counsel shall cause the Summary Notice to be published once in *Investor’s Business Daily*;

(c) Not later than June 14, 2011, Lead Counsel shall cause the Stipulation and its Exhibits to be posted on the following website: www.gilardi.com; and

(d) On or before July 15, 2011, Lead Counsel shall cause to be served on Defendants’ counsel and filed with the Court proof, by affidavit or declaration, of such mailing, publishing and posting.

7. Nominees who hold or held Accuray common stock purchased between February 7, 2007 and August 19, 2008, inclusive, for the beneficial ownership of another Person, shall send the Notice and the Proof of Claim to such beneficial owners of such Accuray common stock within ten (10) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and the Proof of Claim to such beneficial owners.

1 Lead Counsel shall, if requested, reimburse banks, brokerage houses or other nominees solely for
2 their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners who are
3 Settlement Class Members out of the Settlement Fund, which expenses would not have been
4 incurred except for the sending of such notice, subject to further order of this Court with respect to
5 any dispute concerning such compensation. Nominees who do not intend to comply with the
6 provisions of this paragraph shall be requested to notify the Claims Administrator of that fact.

7 8. All Members of the Settlement Class shall be bound by all determinations and
8 judgments in the Litigation concerning the Settlement, whether favorable or unfavorable to the
9 Settlement Class.

10 9. Settlement Class Members who wish to participate in the Settlement shall complete
11 and submit Proof of Claim forms in accordance with the instructions contained therein. Unless the
12 Court orders otherwise, all Proof of Claim forms must be postmarked no later than September 12,
13 2011. Any Settlement Class Member who does not timely submit a Proof of Claim within the time
14 provided for shall be barred from sharing in the distribution of the proceeds of the Net Settlement
15 Fund, unless otherwise ordered by the Court or allowed by the Stipulation.

16 10. Any Person who desires to request exclusion from the Settlement Class shall do so
17 within the time set forth and in the manner described in the Notice. Upon receiving any request(s)
18 for exclusion the Claims Administrator shall promptly notify Lead Counsel and counsel for
19 Defendants of such request(s) and provide them copies of such request(s) and documentation
20 accompanying them by facsimile or electronic mail.

21 11. All Persons who submit valid and timely requests for exclusion in the manner set
22 forth in the Notice shall have no rights under the Stipulation, shall not share in the distribution of the
23 Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment entered in the
24 Litigation.

1 12. Any Member of the Settlement Class may enter an appearance in the Litigation, at
 2 his, her or its own expense, individually or through counsel of his, her or its own choice. If he, she
 3 or it does not enter an appearance, he, she or it will be represented by Lead Counsel.

4 13. Any Settlement Class Member may appear and show cause, if he, she or it has any
 5 reason, why the proposed Settlement of the Litigation should or should not be approved as fair,
 6 reasonable and adequate, why the Judgment should or should not be entered thereon, why the Plan of
 7 Allocation should or should not be approved, or why attorneys' fees and expenses should or should
 8 not be awarded to Lead Counsel; provided, however, that no Settlement Class Member or any other
 9 Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed
 10 Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the order
 11 approving the Plan of Allocation, or the attorneys' fees and expenses to be awarded to Lead Counsel,
 12 unless that Person has postmarked and mailed on or before August 15, 2011 said objections to the
 13 Clerk of the United States District Court for the Northern District of California, and copies to
 14 Robbins Geller Rudman & Dowd LLP, Joy Ann Bull, 655 W. Broadway, Suite 1900, San Diego, CA
 15 92101, and Wilson Sonsini Goodrich & Rosati, P.C., Ignacio E. Salceda, 650 Page Mill Road, Palo
 16 Alto, CA 94304. Any Settlement Class Member who does not make his, her or its objection in the
 17 manner provided shall be deemed to have waived such objection and shall forever be foreclosed
 18 from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the
 19 Stipulation, to the Plan of Allocation, or to the award of attorneys' fees and expenses to Lead
 20 Counsel, unless otherwise ordered by the Court.

21 14. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*
 22 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such
 23 funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

24 15. All papers in support of the Settlement, the Plan of Allocation, and the application for
 25 attorneys' fees or expenses shall be filed and served on or before July 15, 2011. These papers shall
 26 be made available on the website, www.gilardi.com. In its motion for final approval of the

1 settlement Lead Counsel shall identify candidates for cy pres recipients and explain how their
2 missions are related to the issues raised in this action. Any reply papers in response to objections
3 shall be filed and served on or before August 26, 2011.

4 16. Neither the Defendants nor their Related Parties shall have any responsibility for, or
5 liability with respect to, the Plan of Allocation or any application for attorneys' fees or expenses
6 submitted by Lead Counsel, and such matters will be considered separately from the fairness,
7 reasonableness and adequacy of the Settlement.

8 17. At or after the Final Approval Hearing, the Court shall determine whether the Plan of
9 Allocation proposed by Lead Counsel, and any application for attorneys' fees or expenses shall be
10 approved.

11 18. All reasonable expenses incurred in identifying and notifying Settlement Class
12 Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation.
13 In the event the Settlement is not approved by the Court, or otherwise fails to become effective,
14 neither the Lead Plaintiffs nor Lead Counsel shall have any obligation to repay any amounts actually
15 and properly disbursed from the Settlement Fund, as provided in the Stipulation.

16 19. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations
17 or proceedings connected with it, shall be construed as an admission or concession by Defendants of
18 the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any
19 kind and shall not be construed as, or deemed to be evidence of, or an admission or concession that
20 Lead Plaintiffs or any Settlement Class Members have suffered any damages, harm, or loss.

21 20. In the event that the Settlement does not become effective in accordance with the
22 terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement
23 Fund, or any portion thereof, is returned to the Defendants, then this Order shall be rendered null and
24 void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in
25 such event, all orders entered and releases delivered in connection herewith shall be null and void to
26 the extent provided by and in accordance with the Stipulation.

21. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

DATED: 6/10/2011



THE HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE